

## THE TERTIARY EDUCATION TRUST FUND

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The Tertiary Education Trust Fund (the “**Trust Fund**”) was established in 2011 by the Tertiary Education Trust Fund (Establishment, Etc.) Act 2011 (the “**Act**”) and was saddled with the responsibility for imposing education tax on the relevant companies, disbursing the tax to public tertiary education institutions in Nigeria and management & monitoring of the utility of the Fund<sup>1</sup>.

The Act imposes a tax rate of 2% (two per cent) chargeable on the assessable profit of any company registered in Nigeria<sup>2</sup>. The Federal Inland Revenue Service (the “**FIRS**” or the “**Service**”) is the tax authority saddled with the responsibility of the assessment and collection of the tax imposed by the Act<sup>3</sup>.

The establishment and management of the Fund is geared towards the rehabilitation, restoration and consolidation of tertiary education in Nigeria<sup>4</sup>. Section 3(2) of the Act defines the Fund as a body corporate with perpetual succession and a common seal which may sue and be sued in its corporate name.

It is trite to say that Nigeria has faced various problems and experienced tremendous decline in the educational sector, particularly infrastructural development in tertiary institutions. Consequently, the institutions need to be highly subsidized and funded by the Government. Hence the vision behind the establishment of the fund generated from the education tax as imposed on corporate entities.

### HISTORICAL BACKGROUND<sup>5</sup>

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The establishment and mandate of The Tertiary Education Trust Fund (the “**TETFund**”) was originally established as Education Trust Fund (the “**ETF**”) by the Act No 7 of 1993 as amended by Act No 40 of 1998 (now repealed and replaced with Tertiary Education Trust Fund Act 2011) as an intervention agency set up to provide supplementary support to all level of public

The ETF imposed a 2% tax on the assessable profits of all companies in Nigeria to address issues of funding to rehabilitate decaying infrastructure of the education system as well as merge the improvements thereto; build capacity of teachers and lecturers; teacher development; development of prototype designs and other ancillary matters related to education.

The ETF was overburdened and overstretched and could only render palliative support to all levels of public educational institutions in Nigeria, with the main objective of using funding alongside project management for the rehabilitation, restoration and consolidation of Tertiary Education in Nigeria.

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<sup>1</sup> See the preamble of the Act

<sup>2</sup> Section 1(2) of the Act

<sup>3</sup> Section 2 of the Act

<sup>4</sup> Section 3 of the Act

<sup>5</sup> [www.tetfund.gov.ng/index.php/about-us/history](http://www.tetfund.gov.ng/index.php/about-us/history)

The Fund was established at the wake of the President Goodluck Jonathan's administration in 2011 in support and actualization of the "Transformation Agenda".<sup>6</sup>

The Fund is a parastatal of the Federal Ministry of Education with its headquarters situated at the Federal Capital Territory, Abuja, where the major operational activities of the Fund are carried out.

## **SPECIFIC PROVISIONS OF THE ACT.**

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Section 2 subsequently places the obligation and manner of collection of the tax on the Federal Inland Revenue Services (FIRS) as follows:

- (1) The Service shall assess and collect from a company the tax imposed by this Act and accordingly-
  - (a) shall, when assessing a company, for company's income tax or petroleum profit tax for an accounting period of the company, also proceed to assess the company for the tax due under this Act; and
  - (b) the provisions of the Act relating to the collection of company's income tax or petroleum profit tax shall, subject to this Act, apply to the tax due under this Act.
- (2) The tax imposed by this Act shall be due and payable within 60 days after the Service has served notice of the assessment on a company.

However, in practice, companies pay the tax on a self-assessment basis along with their Company Income Tax.

## **ESTABLISHMENT OF THE BOARD OF TRUSTEES**

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Section 4 of the Act provides for the establishment of the Board of Trustees and other ancillary matters related to the Board:

- (1) There is established for the Fund, a Board of Trustees (in this Act referred to as "the Board of Trustees") which shall consist of –
  - (a) a chairman who shall –
    - (i) be a person with good knowledge in finance and administrative matters;
    - (ii) have qualifications and experiences as are required to perform the functions of that office under this Act.
  - (b) 6 persons, each representing a geo-political zone in the country;
  - (c) a representative each of the following Federal Ministries, who shall not be below the rank of a Director-
    - (i) Education; and

- (ii) Finance.
  - (d) a representative each from the Universities, Polytechnics and Colleges of Education; and
  - (e) the Executive Secretary, who shall be the Secretary to the Board of Trustees.
- (2) The membership of the Board of Trustees shall reflect the six geo-political zones of the Federation.
- (3) The members Board of Trustees shall-
- (a) be persons with considerable experience from both the public and private sectors to represent the business, financial and education sectors;
  - (b) be appointed by the President on the recommendation of the Minister;
  - (c) other than the ex-officio members, each hold office for a term of 4 years in the first instance and may be eligible for reappointment for a further term of 4 years and no more;
  - (d) be paid such remuneration and allowances as the President may, from time to time, determine.
- (4) The Board of Trustees shall meet for the conduct of its ordinary meetings 4 times in a calendar year.
- (5) Notwithstanding subsection (4) of this section, the Board of Trustees may meet to conduct such other business as exigency demands.
- (6) The supplementary provisions contained in the Schedule to this Act shall have effect with respect to the proceedings of the Board of Trustees and other matters contained therein.

## **FUNCTIONS OF THE BOARD:**

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Section 6 of the Act goes ahead to stipulates the functions of the Board.

The Board of Trustees shall-

- (a) monitor and ensure collection of education tax by the Service and ensure transfer of same to the Fund;
- (b) manage and disburse the tax imposed by this Act;
- (c) liaise with the appropriate ministries or bodies responsible for collection or safe keeping of the ax;
- (d) receive requests and approve admissible projects after due consideration;
- (e) ensure disbursement of funds to various public tertiary educational institutions in Nigeria;
- f) monitor and evaluate execution of the projects;
- (g) invest funds in appropriate and safe securities;
- (h) update the Federal Government on its activities and progress through annual and audited reports;
- (i) review progress and suggest improvement within the provisions of this Act;

- (j) do such other things as are necessary or incidental to the objects of the Fund under this Act or as may be assigned by the Federal Government;
- (k) make and issue guidelines, from time to time, to all beneficiaries on disbursement from the Fund on the use of monies received from the Fund; and
- (l) generally, to regulate the administration, application and disbursement of monies from the Fund under this Act.

## **MANAGEMENT AND ADMINISTRATION OF THE FUND**

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Section 7 states the management and administration of the Fund by the Board of Trustees as imposed by the Act:

- (1) The Board of Trustees shall administer the tax imposed by this Act and disburse the amount in the Fund to Federal and State tertiary educational institutions specifically for the provision or maintenance of-
  - (a) essential physical infrastructure for teaching and learning;
  - (b) instructional material and equipment;
  - (c) research and publication;
  - (d) academic staff training and development; and
  - (e) any other need which, in the opinion of the Board of Trustees, is critical and essential for the improvement of quality and maintenance of standards in the higher educational institutions.
- (2) The Board of Trustees shall administer, manage and disburse the tax imposed by this Act on the basis of-
  - (a) funding of all public tertiary educational institutions;
  - (b) equality among the 6 geo-political zones of the Federation in the case of special intervention; and
  - (c) equality among the States of the Federation in the case of regular intervention.
- (3) The distribution of funds shall be in the ratio of 2:1:1 as between Universities, Polytechnics and Colleges of Education.
- (4) The Board of Trustees shall have power to give due consideration to the peculiarities of each geo-political zone in the disbursement and management of the tax imposed by this Act between the various levels of tertiary education.
- (5) The Minister shall, on the recommendation of the Board of Trustees and subject to approval by the President, make guidelines for disbursement of funds under this Act.

## **OFFENCES AND PENALTIES UNDER THE ACT:**

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Section 10 and 11 highlights the offences and penalties under the Act:

Section 10(1) provides that a person who contravenes or fails to comply with provisions of this Act is guilty of an offence under this Act.

(2) Subject to the provisions of subsection (3) of this section-

- (a) if a tax due under section 2 of this Act is not paid within the time specified in that section, the Service shall serve on the company, a demand note for the unpaid tax plus a sum which is equal to 5 per cent of the tax; and
- (b) if a sum demanded under paragraph (a) of this subsection is not paid within 2 months of the demand, the company is guilty of an offence under this Act.

(3) Notwithstanding any other provision in this Act, it shall be the duty and responsibility of every company liable to pay education tax to ensure that its annual returns are filed with the Service for the purpose of assessment of education tax.

(4) The Board of Trustees shall, remit in whole or in part a sum added to the unpaid tax under subsection (2)(a) of this section.

(5) Where an offence under this Act is committed by a body corporate or firm or other association of individuals-

- (a) every director, manager, secretary or other similar officer of the body corporate;
- (b) every partner or officer of the firm;
- (c) every person concerned in the management of the affairs of the association; or
- (d) every person who was purporting to act in that capacity is severally guilty of that offence and liable to be proceeded against and punished for the offence in like manner as if he had himself committed the offence, unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance.

Section 11(1) Except as otherwise provided in this Act, a person guilty of an offence under this Act shall, on conviction, be liable-

- (a) for a first offence, to imprisonment for a term of 6 months or to a fine of up to N1,000,000.00 or both; and
- (b) for a second and subsequent offence to imprisonment for a term of 12 months or to a fine of up to N2,000,000.00 or both.

(2) The institution of proceedings or imposition of a penalty under this Act shall not relieve a company from liability to pay to the Service a tax which is or may become due under this Act.

(3) Notwithstanding subsection (1)(a) and (b) of this section, where any company or corporate body liable to file an education tax return under this Act fails in any year to file such return, the Service, if it is of the opinion that such a company or corporate body is liable to pay education tax, may,

according to the best of its judgment, determine the amount of assessable profit of such company and make an assessment of education tax in accordance with the provisions of this Act.

## **JURISDICTION**

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Section 12 of the Act provides for the court with jurisdiction on matters relating to the Fund, which is the Federal High court shall have jurisdiction to try offenders under this Act.

## **LIMITATION OF SUITS**

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Section 13(1) provides that subject to the provisions of this Act, the provisions of the Public Officers Protection Act<sup>7</sup> shall apply in relation to any suit instituted against any officer or employee of the Fund

- (2) Notwithstanding anything contained in any other law or enactment, no suit against any member of the Board of Trustees, the Executive Secretary or any other officer or employee of the Fund for any act done in pursuance or execution of the Act or any other law or enactment, or of any public duty or authority or in respect of any alleged neglect or default in the execution of this Act or such law or enactment, duty or authority, shall lie or be instituted in any court unless-
  - (a) it is commenced within 3 months next after the act, neglect or default complained of; or
  - (b) in the case of a continuation of damage or injury, within 6 months next after the ceasing thereof.
- (3) No suit shall be commenced against a member of the Board of Trustees, the Executive Secretary, officer or employee of the Fund before the expiration of a period of one month after written notice of intention to commence the suit shall have been served upon the Fund by the intending plaintiff or his agent.
- (4) The notice referred to in subsection (3) of this section shall clearly and explicitly state the cause of action, the particulars of the claim, the name and place of abode of the intending plaintiff and the relief which he claims.

It is also pertinent to note that, non-resident companies and unincorporated entities are exempt from tertiary education tax as Company under the Act is defined as a company registered in Nigeria.

## **DEPARTMENTAL OPERATIONS OF THE TETFUND:**

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The Operation of Trust Fund had primarily eight (8) departments<sup>8</sup>-

1. **Project Management** - Primarily, the Project Management Department is saddled with the responsibility of receiving and accessing project proposals from beneficiaries of the fund. These proposals are assessed in-line with the mandate of the Fund to ensure conformity and compliance

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<sup>7</sup> Limitation of suits against the Fund, etc Cap.P41 LFN, 2004

<sup>8</sup> 2013 TETFund Strategic Planning Workshop Manual

with due process<sup>8</sup>. The department is also responsible for proper tracking of the progress of each project

2. **Monitoring and Evaluation** – as the name implies, this department is charged with the routine check and assessment of projects
3. **Education Support services** – the division drives the effective execution of academic based project/programs
4. **Academic Staff Training and Development;**
5. **Finance and Investment** – Custodian of all funds accrued from all sources, and also monitoring of beneficiaries to ensure accountability
6. **Human Resources Development** – saddled with the responsibility of staffing and training of the staff of the Fund, the Human Resources department is also responsible for data collation and storage to determine the needs of the beneficiaries (institutions).
7. **Executive Secretary.**

### **ACCOMPLISHMENT OF THE AIMS AND OBJECTIVES OF THE FUNDS**

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According to the 2013 TET FUND Strategic Workshop Handbook<sup>9</sup>, the intervention Allocation Trend from 2010-2012 for tertiary institutions in millions is tabulated below:

| S/N | SUB-SECTOR            | 2010     | 2011     | 2012     |
|-----|-----------------------|----------|----------|----------|
| 1   | UNIVERSITIES          | N 303.14 | N 395.00 | N 595.00 |
| 2   | POLYTECHNICS          | N 216.56 | N 240.00 | N 337.00 |
| 3   | COLLEGES OF EDUCATION | N 157.17 | N 190.00 | N319.00  |

| S/N | TRAINING/SPONSORSHIP | NUMBER OF BENEFICIARIES |
|-----|----------------------|-------------------------|
| 1   | PhD TRAINING         | 853                     |
| 2   | PhD TRAINING         | 2,103                   |
| 3   | MASTERS TRAINING     | 781                     |
| 4   | MASTERS TRAINING     | 3,006                   |
| 5   | BENCH WORK           | 97                      |
|     | TOTAL                | 6,840                   |

Notwithstanding the ratio (2:2:1) of disbursement of funds to the institutions, the Fund also has special intervention used for projects such as<sup>10</sup>

1. E-Library development in Federal Unity Schools – FGC, Kano & FGGC Kazaure
2. Teaching Practice for Teachers in Colleges of Education all over the country
3. Support for the establishment of Almajiri Model Schools – Almajiri School, Kano
4. Development and rehabilitation of laboratories in Federal and State Polytechnics

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<sup>9</sup> 2013 TETFund Strategic Planning Workshop Manual

<sup>10</sup> 2013 TETFund Strategic Planning Workshop Manual

## **GUIDELINES FOR ACCESSING THE INTERVENTION FUND<sup>11</sup>**

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The Fund has specific guidelines to be followed for accessing funds for projects or grants for researches by beneficiaries<sup>11</sup>. However, we shall be focusing on the provision of the 2017 Intervention Guideline<sup>12</sup> on how beneficiaries can access the regular annual TETFund allocation

To access the funds of the allocation, the following must be fulfilled:

1. Beneficiary institutions must present and defend project proposals before a TETFund panel on an annual basis after release of allocation letters by the Fund;
2. The Beneficiary institutions must have fully completed the previous year's regular intervention projects.
3. For beneficiary institutions with arrears of un-accessed regular allocations, the Board of Trustees allows for a merger of up to 4years of the allocations subject however to the satisfactory completion and verification of the previous year's intervention projects. Furthermore, concurrent utilization of yearly allocations is not allowed, that is, the Fund does not approve of intervention projects of different years running together;
4. Submission of proposed projects to the Fund must be in line with TETFund's Core Mandate of supporting provision of infrastructure for Teaching, Learning and Research.
5. Such submissions should be in pursuit of the strategic priorities of the institution as contained in their Academic Briefs and Strategic Plans.
6. The proposed projects must be justified and total cost attached to each item. Details shall be attached in the appendices to the submission;
7. The proposed project submission will be vetted by the Fund and Approval-in-Principle (AIP) granted if satisfactory.
8. Due Process of vendor engagement must be undertaken in line with the Public Procurement Act (PPA) 2007 and on conclusion, all relevant details of the proceedings are presented to the Fund for vetting and release of first tranche.
9. Subsequent tranches will be disbursed to the Beneficiary Institutions after satisfactory retirement of prior tranches.
10. On no account should vendors be allowed to commence project execution prior to disbursement of first tranche.
11. All Beneficiary Institution submissions must be accompanied with a duly completed checklist.

## **CHALLENGES OF THE FUND AND RECOMMENDATIONS:**

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Notwithstanding the seemingly well laid out structure of the use and disbursement of the funds under the Act, the TETFund still encounters challenges, some of which are highlighted below:

- a. Inability of some beneficiary institutions to adopt project management principles;
- b. Lack of established working connection between projects and institution's objectives;

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<sup>11</sup> [https://www.tetfund.gov.ng/images/News\\_2017/2017\\_tetfund\\_intervention\\_guideline.pdf](https://www.tetfund.gov.ng/images/News_2017/2017_tetfund_intervention_guideline.pdf)

<sup>12</sup> Section 3.0 of the Guidelines: An institution must be enlisted by approval of the Board of Trustees of TETFund to qualify as a beneficiary of TETFund intervention funds.

- c. None or partial compliance with requirements for due process; and
- d. Turnover of top management of some of the institutions

For an improved TETFund there is the need to take necessary steps:

1. **Freedom of Operation** – The Fund should be allowed to operate independently albeit with some check and balances to give room for accountability. The interference of several agencies causes delays in the output of the parastatal.
2. **Participation of Private Sector** – Outside of the tax levied on corporate bodies, the Private sector should be encouraged to assist tertiary institutions with funds/grants for research especially those that can be of immense benefit to the growth of the private sectors too. In addition, structures can be built or educators trained for a more impactful sector.
3. **Transparency and Accountability** – task, assignments and obligations of the Fund and beneficiaries ought to be laid out in succinct terms and incorporated in the Act, and automated systems put in place for monitoring and implementing both disbursement of funds and implementation of projects. In addition, clear-cut reporting line and format should also be adopted for stakeholders.
4. **Offences and Penalties** – The Act only stipulates offences and penalties for defaulting companies but leaves out the enlisted beneficiaries of the Fund. For a more inclusive due process and due diligence, penalties for non-performance of project or misuse of funds should be contained within the Act and implemented to the letter in the case of a default.

The TETFund over the years have been accused of mismanagement of funds by the beneficiaries and general public at large. One of such accusation is by the National Association of University Students (NAUS), who accused the Prof Suleiman Bogoro led Tertiary Education Trust fund (TETFund) of mismanaging funds allotted to the body to execute special projects in public universities across the nation, in 2019. NAUS called on the federal government to as a matter of urgency commence a comprehensive probe of the disbursement of the money by TETFund<sup>13</sup>

Also, in a recent online publication by Punch Newspaper, it was reported that “TETFund found that funds had been used to build houses and purchasing cars. Another variant of this delinquency is the failure to apply for funds set aside to assist public tertiary institutions in journals publication. In 2019, just 26 out of 220 of them applied for the grant”.<sup>14</sup>

The management and the growth of Nigeria’s public tertiary institution cannot be taken with levity and all hands should be on deck, to make sure that all necessary process is provided and implemented in terms of funding, monitoring and absolute compliance on the part of the stakeholders. It is also highly suggested that a fine should be placed on the management of tertiary institutions who do not apply for grants or who mismanages grants/funds disbursed to them.

Conclusively, an integrated system of monitoring and implementation should be put in place for effectual management of outlined due process. The Integrated Payroll and Personal Information System (“IPPIS”) is a good example of a well laid out system The IPPIS is set up to improve the

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<sup>13</sup> <https://www.vanguardngr.com/2019/12/naus-wants-tetfund-probed-over-mismanagement-of-n208bn-fund/>

<sup>14</sup> <https://punchng.com/abuse-of-tetfund-research-grants/>

effectiveness and efficiency of payroll administration for Ministries, Departments and Agencies (MDAs). Thus, bespoke systems and platforms like the IPPIS should be encouraged and put in place for the monitoring, evaluation and management of project under the Fund.